

## Internal Revenue Service

Department of the Treasury  
Washington, DC 20224

Number: **201120012**  
Release Date: 5/20/2011

Third Party Communication: None  
Date of Communication: Not Applicable  
Person To Contact:

Index Number: 1001.01-00

, ID No.  
Telephone Number:

Refer Reply To:  
CC:CORP:B02  
PLR-141176-10  
Date:  
February 04, 2011

### Legend:

Taxpayer =

Business =

Shareholder =

Shareholder  
Parent =

State =

Date =

Year =

A =

B =

C =

D =

E =

F =

G =

H =

New Lender =

AcquisitionCo =

AcquisitionCo  
Agreement =

New Lender  
Commitment Letter =

Dear :

This letter responds to your October 4, 2010 request for a ruling on certain Federal income tax consequences of the Transaction (defined below). A summary of the information set forth in that request follows.

The ruling in this letter is based on facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for the ruling. Verification of the information, representations, and other data may be required as part of the audit process.

### **Facts and Background**

Taxpayer, a State corporation, is engaged in Business. It has common stock outstanding, which is traded on a major exchange. As of Date, Shareholder, a State corporation, owned approximately A percent of Taxpayer's outstanding stock, and the public held the remainder. Shareholder had little or no basis in its Taxpayer stock.

In the years leading up to Date, Taxpayer incurred significant net losses, which precipitated short-term liquidity needs that Shareholder and Shareholder Parent ultimately funded. Subsequently, however, Shareholder and Shareholder Parent informed Taxpayer that they desired to divest their respective debt and equity interests in Taxpayer by Date, when the last of Taxpayer's obligations to Shareholder and

Shareholder Parent matured. In response, Taxpayer began to seek and consider alternative strategic transactions and refinancing transactions which would address Taxpayer's upcoming debt maturities and provide a means for Shareholder to divest its equity ownership of Taxpayer and for Taxpayer to repay its obligations to Shareholder and Shareholder Parent prior to Date. As of Date, Shareholder and Shareholder Parent, a foreign corporation, held all of Taxpayer's debt, \$B and \$C, respectively (collectively, the "Debt").

After exploring various alternatives, Taxpayer decided to merge with AcquisitionCo, a domestic special purpose acquisition vehicle formed in Year to effect a range of business combinations with one or more operating companies. By Date, AcquisitionCo was a publicly-traded entity with net assets of approximately \$D, mostly cash. Despite AcquisitionCo's liquidity, however, Taxpayer still needed a third-party loan to conclude the merger with AcquisitionCo and retire all of the debt and equity interests of Shareholder and Shareholder Parent. To that end, Taxpayer negotiated a financing arrangement with New Lender.

### **The Transaction**

On Date, Merger Sub, a wholly-owned subsidiary of Taxpayer formed to effect the merger, merged with and into AcquisitionCo, with AcquisitionCo surviving. AcquisitionCo then merged with and into Taxpayer, with Taxpayer surviving. AcquisitionCo's shareholders exchanged all their outstanding AcquisitionCo shares for shares and warrants of Taxpayer equal to approximately E percent of Taxpayer's equity. Net of all expenses, Taxpayer raised approximately \$D in the Transaction. New Lender committed to make available up to \$F to Taxpayer under a new asset-backed secured revolving credit facility.

As a condition of the Transaction, AcquisitionCo and New Lender required Taxpayer to use the cash raised to pay off all outstanding debt to Shareholder and Shareholder Parent. That condition was in the transaction documents, specifically the AcquisitionCo Agreement and the New Lender Commitment Letter. Thus, on the same day as the merger, Taxpayer satisfied in full all outstanding amounts it owed Shareholder and Shareholder Parent, including accrued interest. Pursuant to the terms of the Agreement, on the same day as the merger, Shareholder tendered and Taxpayer acquired from Shareholder all the Taxpayer stock that Shareholder owned in exchange for an aggregate of G warrants to purchase Taxpayer common stock.

At the end of the day, Shareholder and Shareholder Parent held no Taxpayer debt or equity, except for the warrants. The estimated value of the warrants did not exceed \$H.

### **Representations**

- (a) Taxpayer's Debt is debt for U.S. Federal income tax purposes.

- (b) In the event of a liquidation, Shareholder and Shareholder Parent, in their capacities as the holders of the Debt, would have been entitled as a matter of law to receive Taxpayer's assets in satisfaction of their claims before the holders of Taxpayer's common stock would have been entitled to receive any such assets.

### **Ruling**

Based solely on the information submitted and the representations set forth above, we rule that the form of the Transaction is to be respected for U.S. Federal income tax purposes. Specifically, Taxpayer's cash payment is to be respected as having been made in full to satisfy Taxpayer's Debt, and the issuance of the Warrants is to be respected as having been made in full to retire Taxpayer's common stock that Shareholder then held. Cf. Rev. Rul. 74-515, 1974-2 C.B. 118.

### **Caveats**

No opinion is expressed about the tax treatment of Taxpayer as a result of the Transaction under other provisions of the Code and regulations or on the tax treatment of any conditions existing at the time of, or effects resulting from, the Transaction that are not specifically covered by the above rulings.

### **Procedural Statements**

This ruling letter is directed only to Taxpayer. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this ruling letter must be attached to any income tax return to which it is relevant. Alternatively, any taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to the returns that provides the date and control number of this letter ruling.

In accordance with the power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representatives.

Sincerely,

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Gerald B. Fleming  
Senior Technician Reviewer, Branch 2  
Associate Chief Counsel (Corporate)

cc: